

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAMUEL THOMAS
GOSZULAK and HUNTER GOSZULAK,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID WAYNE GOSZULAK,

Respondent-Appellant,

and

KATHRYN NICOLE MOOREHEAD,

Respondent.

UNPUBLISHED

April 13, 2010

No. 291864

Calhoun Circuit Court

Family Division

LC No. 2007-000366-NA

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, JJ.

PER CURIAM.

Respondent-appellant David Wayne Goszulak appeals as of right the order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (j), and (m). We affirm.

Respondent does not challenge the existence of the above statutory grounds. Rather, he contends that trial counsel was ineffective. The issue is not preserved where respondent did not move for a new trial or an evidentiary hearing. *People v Sabin*, 242 Mich App 656, 658; 620 NW2d 19 (2000). Our review is therefore limited to the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To establish a claim of ineffective assistance of counsel, respondent must show that counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by counsel's deficient performance. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Respondent first contends that his trial counsel failed to elicit testimony as to why he voluntarily relinquished his right to another child. Respondent argues that if the court knew that

he relinquished his rights so that the child could receive public benefits to attend college, it would have given very little, if any, weight to MCL 712A.19b(3)(m), which addresses the situation where the parent's parental rights to another child were voluntarily terminated.

"The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statute's plain language." *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). "[I]f the language of the statute is clear and unambiguous, no interpretation is necessary and the court must follow the clear wording of the statute." *American Alternative Ins Co, Inc v Farmers Ins Exchange*, 470 Mich 28, 30; 679 NW2d 306 (2004). The plain language of MCL 712A.19b(3)(m) provides for termination of parental rights where the parent's rights to another child were voluntarily terminated. There is no language in the statute directing the trial court to consider the circumstances under which the parent relinquished his parental rights. Thus, respondent has failed to demonstrate that counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by his counsel's deficient performance. *In re CR*, 250 Mich App at 198.

Respondent next contends that counsel failed to address the risk of harm to the children if returned to his care. We agree that respondent's counsel did not ask the witness to explain how and/or why the children would be at substantial risk if returned to his care. However, other evidence was introduced that discussed the risk of harm the children faced if returned to respondent's care, and this testimony supported a finding that there was a reasonable likelihood, based on respondent's conduct, that the children would be harmed if returned to his care, MCL 712A.19b(3)(j). "Decisions regarding what evidence to present . . . are matters of trial strategy." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). This Court will not substitute its judgment for that of counsel regarding matters of trial strategy. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). On this record, where there was already damaging information on the subject of risk, we cannot conclude that counsel's failure to open the door to potentially more damaging evidence fell below an objective standard of reasonableness.

"Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases." *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008). "There is accordingly a strong presumption of effective assistance of counsel." *Id.* Further, the failure to present evidence rises to ineffective assistance of counsel if defendant was deprived of a substantial defense. *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990). "A substantial defense is one that might have made a difference in the outcome of the trial." *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). Respondent does not set forth any information counsel should have or could have elicited that would have been helpful to his case. Thus, respondent has failed to show that counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by counsel's deficient performance. *In re CR*, 250 Mich App at 198.

Respondent next contends that trial counsel failed to question him on the appropriateness of his home or his likelihood of finding employment upon his release from jail -- resulting in counsel's failure to show that respondent could, within a reasonable time, provide proper care and custody for his children. We acknowledge that counsel did not ask respondent on direct examination how he could provide for his children once released from jail. However, on cross-examination, respondent was asked if there was any reasonable expectation that he could provide

for the children once released from jail. Respondent acknowledged that it would be hard for him to find employment due to his criminal record. He added, however, that he could provide for his children emotionally and financially. Even if respondent's trial counsel's conduct in failing to address the issue fell below an objective standard of reasonableness, there was no reasonable probability that the result of the proceedings would have been different given respondent's lengthy substance abuse problem and his criminal history. Thus, respondent has failed to meet his burden of proof and relief is not required. *Id.*

Finally, respondent contends that counsel failed to argue during closing statements that his parental rights should not be terminated. A review of counsel's closing argument shows that he put forth the argument that respondent's parental rights should not be terminated. Although counsel's argument could have been clearer and more concise, the record before this Court demonstrates that, regardless of what respondent's trial counsel argued in his closing statement, the trial court was unlikely to rule in any way other than terminating respondent's parental rights. Clear and convincing evidence was presented warranting termination pursuant to MCL 712A.19b(3)(g), (j), and (m) and warranting a finding that termination was in the children's best interests. Thus, respondent's argument fails. *Id.*

Affirmed.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens